

**R590. Insurance, Administration. (Effective 10-3-2012)**

**R590-122. Permissible Arbitration Provisions.**

**R590-122-1. Authority.**

This rule is promulgated by the commissioner of Insurance under the general authority granted under Section 31A-2-201(3).

**R590-122-2. Purpose and Scope.**

(1) This rule recognizes arbitration as an acceptable method of alternative dispute resolution. The rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:

(a) define the term "permissible arbitration provision" as set forth in Sections 31A-21-313(3)(c) and 31A-21-314(2); and

(b) provide guidelines upon which disclosure of a contract arbitration provision is to be made.

(2)(a) Except as provided in (b), this rule is applicable to both individual and group contracts and to all classifications or lines of insurance.

(b) This rule does not apply to individual and group income replacement policies or health benefit plans that comply with R590-215.

**R590-122-3. Definitions.**

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 78B-11-102 and 31A-1-301, and the following:

(1) "Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

(2) "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.

(3) "Optional binding arbitration" means a contract provision requiring any party to an insurance contract to submit to arbitration as set forth in such contract at the election of any contracting party, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

**R590-122-4. Rule.**

(1) Compulsory non-binding arbitration is contrary to the public interest and is not a "permissible arbitration provision."

(2) Optional binding arbitration at the exclusive election of an insured party is a "permissible arbitration provision," in which case the disclosure provisions in paragraph 5 below may not be applicable.

(3) Both compulsory and optional binding arbitration at the election of either the insured or the insurer are "permissible arbitration provisions."

(4) Policy forms containing optional binding arbitration provisions for the exclusive election of an insurer will be disapproved under Subsection 31A-21-201(3)(a)(iv). Such provisions in previously approved forms are declared not enforceable. They will be construed and applied as if in compliance with the Insurance Code, as permitted under Section 31A-21-107.

(5) Except as excluded in paragraph 2 above, each application or binder pertaining to an insurance policy which contains a permissible arbitration provision must include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF (THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR), A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY.

ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES IF ALLOWED BY STATE LAW AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF PROPER JURISDICTION.

Such statement must be disclosed prior to the execution of the insurance contract between the insurer and the policy holder and, in the case of group insurance, shall be contained in the certificate of insurance or other disclosure of benefits.

(6) Both compulsory binding arbitration provisions and optional binding arbitration provisions may not be construed to preclude any dispute resolution by any small claims court having jurisdiction.

(7) All arbitration provisions contained in insurance policies shall be in compliance with the "Utah Arbitration Act" (Title 78B, Chapter 11).

(8) Any such agreement for arbitration may not obligate any insured to pay more than 50% of the advance payments required to begin the arbitration process.

(9) No arbitration provision may require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

#### **R590-122-5. Severability.**

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance law**

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